

The Illusion of the Free Press

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PREFACE

On 30 October 1938, Orson Welles aired over the Columbia Broadcasting System an adaptation of HG Wells's science-fiction novel, *The War of the Worlds*.¹ The adaptation consisted of a 60-minute radio programme, in which simulated press bulletins were inserted over a regular musical show being broadcast live from New York's Park Plaza Hotel. These bulletins interrupted the show on a regular basis, with increasingly alarming news about a series of strange events connected with a burning object that had allegedly fallen from the skies and landed somewhere in New Jersey. What was considered at the beginning of the show by (fake) scientists interviewed by (fake) reporters to be the most improbable explanation of such events, turned out to be the fatal outcome: Martians (and not the good sort) were invading the Earth.

Some speculation about the reaction of the public to the programme, and more specifically about the extent to which panic took over listeners in New York and other American and Canadian cities, followed the show. Sceptics claimed that fewer than 20 per cent of listeners believed that the Earth was actually under Martian attack.² The *New York Times*, on the other hand, opened its front page the next morning with the headline 'Radio Listeners in Panic, Taking War Drama as Fact', and claimed that a 'wave of mass hysteria seized thousands of listeners ... and disrupted households, interrupted religious services, created traffic jams and clogged communications systems'.³ Regardless of disputes over the scale of the effect that the programme had on its listeners, there was no doubt about the underlying message behind it. Welles's experiment not only clearly showed the power that technology could exert over its audiences, at a time when people were only beginning to get used to the effects of technological progress, but also warned about the potential for the media to deceive the public. By describing a non-reality, opening a chasm between media descriptions of reality and the reality they describe, Welles revealed the distance that separates these two realms and exposed the fragility of one of the central institutions of liberal democracies. He was severely criticised for attempting to undermine confidence in the system and had to make public apologies.

¹ O Welles, 'Orson Welles—War Of The Worlds—Radio Broadcast 1938—Complete Broadcast', available at www.youtube.com/watch?v=Xs0K4ApWl4g&feature=youtu.be_gdata_player.

² S Lovgen, "'War of the Worlds': Behind the 1938 Radio Show Panic", *National Geographic News* (17 June 2005), available at http://news.nationalgeographic.com/news/2005/06/0617_050617_warworlds.html.

³ 'Radio Listeners in Panic, Taking War Drama as Fact', *New York Times* (31 October 1938).

What Welles unveiled with his experiment is a central theme of this book. It refers to what will be called the 'illusion of the free press'. The word 'illusion' means a 'deceptive appearance or impression', or 'a false idea or belief'. Although this meaning is not all there is to the word, and is not the one that will be generally used in this book (as will be explained shortly), it is the one used by the relevant critical literature to describe the state of the media in contemporary societies, among them one of its most influential critiques, the critique of the political economy of the press (CPEP). The CPEP has provided consistent valuable research about the structure and functioning of the press in advanced capitalist societies.⁴ It has shown, among many other things, that the property of the means of communication is concentrated in a few hands, that the press responds to the interests of those who finance it (advertisers) and that these last are not necessarily aligned with the public interest but are sometimes in open contradiction. From this point of view, the CPEP has argued that the press is not free and independent but is subject to a series of financial, economic and political constraints, which necessarily affect its communications and hence the way in which it portrays social reality. The free press is thus a mere illusion, a deceptive idea of what it really is. The central purpose of the CPEP is thus to unveil the illusion, to show the *real* face of the press in order to raise awareness and consciousness about the distance separating appearances from reality.

Other thinkers, usually associated with the postmodern tradition, have argued, on the other hand, that the inability of the media to represent reality as it is, exceeds the material conditions in which it functions.⁵ Their point is that regardless of the way in which it is structured, the media will never be able to reproduce reality because reality is not reproducible. From an ontological perspective, the argument is that the world (in the broad sense of the term) is pure chaos, pure antagonism, and that any effort to give meaning or sense to it will always be condemned to failure. The texture of reality is, in other words, so different from the texture of language that the latter is not only unable to reproduce it, it cannot even represent it. Any representational attempt is viewed as the consequence of power struggles, where disputing forces fight to construct a reality that best fits their interests, with the aim of making those constructions the dominant view of reality. Accordingly, representations of reality are mere illusions. At best, they would only show the power interests involved in those representations.

⁴ Among some of the authors under this label that will be explored in ch 1 are R McChesney, *The Political Economy of Media: Enduring Issues, Emerging Dilemmas* (New York, Monthly Review Press, 2008); N Chomsky and E Herman, *Manufacturing Consent: The Political Economy of the Mass Media* (London, Vintage, 1994); B Bagdikian, *The New Media Monopoly*, 7th edn (Boston, MA, Beacon Press, 2004); H Marcuse, 'Repressive Tolerance' in A Feenber and W Leiss (eds), *The Essential Marcuse: Selected Writings of Philosopher and Social Critic Herbert Marcuse* (Boston, MA, Beacon Press, 2007).

⁵ Among some of the theorists whose work will be analysed in ch 1 are M McLuhan, *Understanding Media*, 2nd edn (New York, Routledge, 2001); J Baudrillard, *Simulacra and Simulation*, tr S Glaser (Ann Arbor, MI, The University of Michigan Press, 1994); N Postman, *Amusing Ourselves to Death* (London, Methuen Publishing Ltd, 1987).

From another point of view, thinkers from this tradition have emphasised the relevance of technology in the process of mediation. They maintain that technologies offer different forms of communication, forms that diverge in the way in which they approach their objects, in their point of views and in the aspects they tend to emphasise or ignore about them. This is why they argue that the world of typography was completely different from the world of television, and the latter completely different from the digital world. Technologies themselves, with their particular codes, languages and modes of communication, have epistemological implications because they affect our perception and understanding of the world. But the way we perceive the world also changes the way in which we relate to it and the way in which we relate to each other. This is why postmodernists argue that technologies shape and mould reality.⁶ Accordingly, not only have technologies altered our perception and understanding of the world, they have gone much further: they have modified the world itself. From this point of view, the illusion consists in believing that the media, through their technological platforms, mediate a reality that exists in itself, when the fact is that they construct the very reality they are supposed to mediate.

The critiques offered by the CPEP and by postmodernism will be explored in detail in Chapter 1. Not only have they enriched academic discussion, they have also permeated the broader public opinion. The events that led in Britain to the formation of the Leveson Inquiry opened debate over and discussion of the problems associated with media empires, corrupt editors, the collusion of politicians and media moguls, obscure manipulation of the political agenda and so on. More recently, the dissemination of fake news during the Brexit campaign and Donald Trump's election in the United States, both in 2016, brought media regulation to the fore in public discussion. The deep gulf that separates the idea of a free press from its real functioning was exposed, and the effects of that understanding are yet to be seen. What we still do not know (and perhaps never absolutely will) is to what extent these events will modify the way in which mass audiences relate to the news they receive from the media. How does our knowledge about its real conditions affect our epistemic attitude towards its contents and discourses? To what degree will these events alter the legitimacy of its claim to adequately and accurately portray reality?

Given the first meaning assigned to the concept of illusion, that is, as a false representation of reality, some would answer that nothing would really change. According to Peter Sloterdijk, for example, this would be so because the prevalent attitude of postmodernism is cynicism, which is reflected in what he calls the 'enlightened false consciousness'.⁷ In relation to the 'illusion of the free press', the cynical subject would know very well the distance separating the idea of a free press and the actual conditions in which it functions in capitalist societies.

⁶ See especially McLuhan, above n 5; Postman, above n 5.

⁷ See P Sloterdijk, *Critique of Cynical Reason*, tr M Eldred (Minneapolis, MN, University of Minnesota Press, 1987) 5.

She knows about media concentration, she knows the huge political, commercial and financial pressures influencing its discourses, she knows that its depictions of reality fall far short of reality, and so on. Nevertheless, the cynical subject keeps on acting *as if* she did not know all these things. She keeps on informing herself through the news, using that information as part of her general knowledge about the world she lives in and using it, usually as a matter of fact, in her daily conversations. From this assumption, Sloterdijk concludes that we live in a post-ideological era in which our knowledge of the hidden mechanisms of the system does not affect the way in which we relate to it. The enlightened false consciousness is as servile to ideological commandments as the ignorant one. In this sense, ideology, after all, would be completely irrelevant.

However, do we truly live in a post-ideological era? Is ideology completely irrelevant, now that we have discovered that our knowledge about how things *really are* does not necessarily affect our attitudes towards them? These questions—which will be tackled in the first chapter—lead us to the central point of this book. The point is that in order to think about the ‘illusion of the free press’, it is not enough to focus merely on the first meaning of the word ‘illusion’. Indeed, if the illusion is that the press is free and independent, or if the illusion is that there is a deep fissure that separates reality from the way in which the media portray it, one would be forced to conclude (with Sloterdijk) that ideology is irrelevant, because once those illusions are dispelled, once we know how things really are, nothing really changes. The system continues reproducing itself, regardless of our insight into the way in which it works. But the real problem is that the media still form an ideological apparatus and that we are still subservient to that apparatus in so many ways. So the question that needs to be asked is: why, despite our knowledge of the conditions of the press in capitalist societies and its consequent distance from the ideal of a free press, is it still such a central institution and the idea of a free press one of the central principles in liberal democracies?

A second meaning of the word ‘illusion’ provides a better answer to this question. For the fact is that the illusion is not merely a false idea of what the media really are. Neither is it solely the wrong belief that social reality corresponds to the way in which the media portray it. There is something more. Something that is ingrained in the history of the ‘free press’, in the fight for its recognition and in public expectations of it. It is not necessary to go very far to discover this additional element. It is inscribed in the meaning of the word ‘illusion’ itself. In fact, illusions are not only false ideas or beliefs, they are also the expression of a desire. We refer to a belief as an illusion, according to Freud, when ‘wish-fulfilment plays a prominent part in its motivation’.⁸ I could have the illusion, for example, that the world will be a fair place, that substantial inequality will be overcome or that there will be no more wars. From the point of view of the press, the illusion is connected to an epistemological desire. The desire to understand the world in which we live, to grasp our political contingency with all its nuances and subtleties, and so on.

⁸ S Freud, *The Future of an Illusion*, tr JA Underwood et al (London, Penguin Books, 2008) 38.

Illusion, as desire, insists on affirming the ontological independence of social reality, but more importantly, the potential of gaining cognitive access to it. If, despite our knowledge of the actual conditions of the press, the illusion does not recede, it is because this 'other' illusion is necessary. We need the illusion in order to preserve the idea that there is a correspondence between reality *qua* reality and that same reality as the media portray it. The illusion is necessary if an important part of our experience is to retain consistency. Otherwise, if we renounce the illusion, we lose the grounding of a relevant portion of our social reality. In fact, most—if not all—of any common individual's knowledge about political contingency, international affairs, economic trends and crises, technological and scientific developments, culture, sports and so many other things comes directly or indirectly from the news he receives from the media. Whenever we engage in conversations about these topics, form an opinion or share our ideas about them, we need to assume that our knowledge is a reflection of a reality that exists independently of the media and not knowledge about how the latter construct that reality. If we do not retain this illusion, if we do not stick to this desire, then our social reality loses consistency. If we cannot represent to ourselves that a building, which stands before our eyes, has a backside that corresponds to its front, as Žižek argues, '[our] perceptual field disintegrates into an inconsistent, meaningless mess'.⁹ The history of the free press itself reveals this necessity. It is contained mainly in its pseudoscientific aspiration of communicating reality as it is, of discovering the truth through its narratives. The *Observer*, the *Daily Mirror*, *The Times*, and even the Plato-conjuring *Sun* are all names of newspapers that reflect this aspiration. But behind these names there is much more than a self-contained ambition. There is a social expectation that the world that appears through the news is an adequate representation of the world as it is in itself, and this expectation, as will be argued, is contained in the illusion of the free press.

This approach to the illusion has a fundamental methodological consequence. In fact, in order to understand the origins, scope and implications of the illusion of the free press, it is necessary to explore the relationship between truth and freedom. More specifically, what needs to be investigated is how the free press is supposed to be an adequate means for the discovery of truth. Now, if the illusion is not merely a deceptive idea of what the press really is but something that is inherent to the institution of the free press itself, the best place to observe the relationship between truth and freedom is in the liberal theory. Indeed, this is the theory that has studied more closely than any other the notion of the free press.¹⁰

Two central themes will emerge from this analysis. The first is that truth has played a central function in literature on free speech from the seventeenth century on. Truth, however, has not always been understood in the same way. It will emerge that the classic theory has defended truth as a correspondence between reality and

⁹ S Žižek, *Tarrying with the Negative: Kant, Hegel and the Critique of Ideology* (Durham, NC, Duke University Press, 1993) 85.

¹⁰ See J Raz, 'Free Expression and Personal Identification' (1991) 11 *OJLS* 303.

its descriptions. Therefore, the purpose of expressive freedoms is to provide an adequate depiction of the world in which we live. In democratic theories, expressive freedoms are conceived of as a means of advancing political truths. Truth here is no longer correspondence with an outer reality but instead coherence between a central judgement (a political truth) and a set of judgements and institutions subordinated to this truth. In the case of autonomy theories, truth takes the form of authenticity, where expressive freedoms are conceived of as a mechanism contributing to the discovery of the true self. As will be argued throughout this book, the connection between freedom and truth in free-speech literature is the consequence of the desire to know and understand the world in which we live, the functioning of our political communities and to validate our own identity.

The second theme that will emerge from this book is the inherent tension that exists between truth and freedom. The point is that—as Hannah Arendt argues—while the discovery of truths or the advancement of knowledge supposes modes of thought and communication that are necessarily domineering,¹¹ no such modes are supposed to guide a free debate of ideas. If the modes of communication proper to the discovery of truths are used as standards of public discussion, free expression would be utterly and unacceptably precluded. This is why some argue that universities, journals, the scientific community, research communities and not the press would hence be the institutions best fitted for attaining this purpose. On the other hand, to consider the free press an adequate standard for the discovery of truth is to degrade truth to subjective or relative conceptions, where any view would be as valid as any other as long as it was coherently sustained. The inherent tension between truth and freedom manifests itself in the different theories that will be explored in the book.

This book consists of five chapters. Chapter 1 will analyse the concept of the illusion of the free press through the critique of the political economy of the press and cultural critiques. It will be argued that although they have contributed valuable insight to the debate, they are unable to explain why, regardless of our knowledge about how it works, the press remains a central institution in liberal democracies. The problem of these theories is that they conceive of the illusion of the free press as false consciousness. Under this logic, they assume that the illusion is removable or disposable. However, as will be shown, the illusion is not a problem of false consciousness but one of necessity. As a consequence, it is not possible to renounce the illusion, because as soon as we do that, we lose our sense of reality. Using Kant's notion of 'transcendental illusions' as an analogy, Chapter 1 will close by explaining the necessity for maintaining a connection between reality and appearances. This notion will be crucial to understanding the non-renounceable and non-disposable character of the illusion of the free press, and hence the necessity of exploring the relationship between truth and freedom from within free-speech literature.

¹¹ H Arendt, 'Truth and Politics' in *Between Past and Future: Eight Exercises in Political Thought* (New York, Penguin Books, 1977) 241.

Chapter 2 will explore the place of truth in free speech literature from the seventeenth to the nineteenth century in England. It will start with John Milton's *Areopagitica*—a pamphlet addressed to the English Parliament opposing the institution of licensing—in which Milton defends with great eloquence freedom of opinion and a free press as mechanisms for the discovery of truth. Despite the increasing political importance of the role of the free press in the eighteenth and nineteenth centuries, its truth-seeking purpose remained a fundamental argument for its justification. The latter achieved its chief expression with John Stuart Mill's 'theory of the truth', which, as it will be argued, was a revival of Milton's defence.¹² A central issue that will run through Chapter 2 will be the model of truth involved in these developments. Milton's theory emerged in a theocentric age, and his notion of truth follows a correspondence model that has been commonly referred to as a 'god's-eye view' of things. Although Mill is theoretically committed to this notion of truth, as will be shown, he also needs a subjective or perspectival truth in order to justify his argument that every opinion is as valuable as any other. This ambiguous approach to truth that shows itself in the text is the way in which Mill deals with the tension between freedom and truth, and this ambiguity is symptomatic of the illusion of the free press.

The reception of the classic theory in the United States and its application to the press will be explored in Chapter 3. The analysis will start with a jurisprudential product developed on the other side of the Atlantic Ocean in the form of a dissenting opinion given by Justice Oliver Holmes Jr in *Abrams v United States*. Under the name of the 'marketplace of ideas', it became a central justification of the First Amendment. But just like its predecessor, it embodied an irreconcilable tension between truth and freedom, a tension that led to a bitter repudiation of the truth-seeking purpose of expressive freedoms within the liberal theory itself. In the course of this dispute with truth-seeking justifications, two central theories emerged that proposed a different approach. On the one hand, democratic theories justified the protection of expressive freedoms because they considered them to be essential to the development and strengthening of a democratic polity.¹³ Some of these theories stressed the point that expressive freedoms should guarantee that everything worth saying in a democratic society, that is, everything that contributes to the discussion about how to live our lives in common, should be said. Other democratic theories emphasise the value of political autonomy, recognising expressive freedoms as the right of every individual to contribute to the formation of public opinion.¹⁴ Despite their differences, both approaches coincide in

¹² See A Haworth, *Free Speech* (London, Routledge, 1998) 3.

¹³ Among those who defend this approach are A Meiklejohn, 'Free Speech and its Relation to Self-Government' in *Political Freedom: The Constitutional Powers of the People* (New York, Oxford University Press, 1965); O Fiss, *The Irony of Free Speech* (Cambridge, MA, Harvard University Press, 1996); CR Sunstein, *Democracy and the Problem of Free Speech* (New York, The Free Press, 1995); R Post, 'Participatory Democracy and Free Speech' (2011) 97 *Virginia Law Review* 477.

¹⁴ See especially Post, above n 13.

the importance they assign to political speech over any other form of speech, and in the fact that their theories are supported by particular conceptions of democracy, conceptions that define the scope and understanding of the free press. On the other hand, autonomy theories (which will be analysed in Chapter 4) criticise the consequentialist nature of both democratic and truth-seeking justifications. According to autonomy theorists, expressive freedoms are not instruments for the achievement of particular goals but a proper manifestation of the autonomous character of human beings.¹⁵ Accordingly, it is not the form of speech or its goals that define and justify constitutional protection; only the dignity of the autonomous individual counts as a valid justification for the protection of these freedoms.

The purpose of Chapters 3 and 4 is not simply to describe how democratic and autonomy theories, respectively, rejected truth-seeking justifications but to show that whenever truth has been denied access through the front door, it has entered through the back. In Chapter 3, it will be argued that although the theocentric model of truth advanced by Milton and its secularised version defended by Mill were rejected by democratic theories, an understanding of truth in the form of 'coherence' emerged. Within these theories the scope, meaning and purpose of the free press was subjected to particular conceptions of democracy, or to what some authors have called 'the plan contained in the Constitution.'¹⁶ These conceptions present themselves as truths that define admissible discursive practices and with them the form and functions of a free press in a democratic society. They serve as a mirror to reproduce the democratic system itself and to guarantee its legitimacy. What is true and what is false is not necessarily the relation to some objective reality but is reduced to the internal coherence of the democratic system itself. Rather than reflecting a reality that exists in itself, truth as coherence has a constitutive dimension that defines the discursive conditions of societies and the practices associated with them according to particular conceptions of democracy.

Chapter 4 will analyse the space of truth in autonomy theories of free speech and its application to the free press. It will be argued that regardless of a general scepticism by autonomy theorists about the truth-seeking purpose of expressive freedoms, truth emerges in these theories in the form of authenticity or the discovery of the true self. Truth, in this context, is no longer something that must be searched for in the outer world. It is not correspondence with an external reality, as it is in the classic tradition of free speech; neither is it coherence with a central judgement, as it is with democratic arguments. By contrast, in autonomy theories,

¹⁵ Influential autonomy theories have been developed by T Scanlon, 'A Theory of Freedom of Expression' (1972) 1 *Philosophy & Public Affairs* 204; T Scanlon, 'Freedom of Expression and Categories of Expression' (1979) 40 *University of Pittsburgh Law Review* 519; Raz, above n 10; CE Baker, *Human Liberty and Freedom of Speech* (New York, Oxford University Press, 1989); R Dworkin, 'The Coming Battles over Free Speech' *The New York Review of Books* (11 June 1992), available at <http://www.nybooks.com/articles/1992/06/11/the-coming-battles-over-free-speech/>.

¹⁶ See Meiklejohn, above n 13, 70.

truth is located within the subject himself and takes the form of authenticity. Chapter 4 will show the relationship between the discovery of the ‘true self’ and expressive activities, and how this relationship manifests itself in some influential autonomy theories of free speech.¹⁷ The tension between truth and freedom is manifest here in an ambiguous conception of the subject and the role of a free press in the public validation of subjectivity.

Chapter 5 is an attempt to harmonise truth and freedom. This is an important challenge, because despite their tension, the relationship between truth and freedom, as expressed in free-speech literature, responds to an epistemological necessity that is driven by our desire to understand the world in which we live, our political contingency and our own identity. In Chapter 5, it will be argued that at the basis of the tension between truth and freedom is the concept of freedom as non-interference. Invented by Thomas Hobbes to justify absolute forms of government, this concept has been crucial in shaping and legitimising a media environment governed by radical market logics hostile to the truth-seeking purpose of the press. A republican version of freedom (freedom as non-domination) will be presented as a conceptual alternative that is tolerant of forms of interference with the market aimed at shaping the structure and functioning of the press in order to stimulate truth-seeking practices.

Before moving forward, a methodological warning must be made. This book uses indistinctively and interchangeably the concepts of ‘free speech’ and ‘free press’. It does so not because there are no distinctions between them, but because the level of generality at which the argument works throughout most of the book (Chapters 2 through 4) does not require such fine distinctions. The book explores the rationales that justify press freedoms and their inherent connection to truth. The rationales under scrutiny apply without distinction to both individual freedoms (free speech) and institutional freedoms (free press). The democratic argument (Chapter 3) that claims that free speech is a necessary tool for enhancing public deliberation applies to both individual speakers and the media. The same can be said about the classic argument (Chapter 2), which maintains that expressive freedoms are a means for the discovery of truth and the advancement of knowledge. From this argument’s point of view, expressive freedoms, regardless of their source, would enhance the truth-seeking purpose. Things get a bit more complicated with arguments that justify expressive freedoms on autonomy grounds (Chapter 4). The type of argument that claims, for example, that free speech is valuable because protecting self-expression is a way of enhancing the speaker’s personal autonomy, is clearly not applicable to the media. As Onora O’Neill has argued, the press is not in the business of self-expression and should not be in it.¹⁸ What we expect from the press is for it to communicate information

¹⁷ Mainly Scanlon, ‘Freedom of Expression and Categories of Expression’, above n 15; and Raz, above n 10.

¹⁸ O’Neill, ‘News of This World’ *Financial Times* (18 November 2011).

that is in the public interest, and to do so in a way that provides resources that allow everyone to make adequate judgements about the world in which we live. Although it makes perfect sense that free-speech rationales of this sort are not applicable to the media, there are free-speech theories that, while grounded on autonomy grounds, are also applicable to the media. These will be dealt with in Chapter 4. These theories argue that free speech is a public good. As such, its protection is justified by audiences' interest rather than by speakers' interests. According to Raz, for example, free speech contributes to enhancing individual identity because public portrayals and expressions of specific sorts of life are a form of validation while their censoring is a form of condemnation.¹⁹ Just as in democratic and classic rationales, speech is protected not as a consequence of *who* expresses it but as a consequence of *what* is expressed. Therefore, these rationales apply to both institutional and individual speech.

If no distinctions between the concepts of free press and free speech are necessary at the level of the rationales justifying them (at least the ones analysed in this book), it is necessary to make some distinctions in order to construct the idea of the *illusion of the free press* (Chapter 1) and to defend media regulation aimed at enhancing its truth-seeking practices (Chapter 5). The illusion of the free press as an epistemological necessity applies only to communications that are delivered by the media. If we are prone to believing that the world shown by the press corresponds to the world itself, it is because we need to assume that press freedoms are designed or have the ability to direct institutional communications towards that goal. The same is not always true about self-expression, which can be orientated towards goals that have nothing to do with truth discovery. This marks an important distinction between free speech and the free press. In fact, although some of the rationales that justify free speech may coincide with the rationales that justify the free press, the latter is expected to perform certain functions that are vital to democratic societies which are not necessarily expected from individual speakers. If the latter is true, as Phillipson seems to claim, the media should be endowed with certain privileges and carry the weight of certain responsibilities that should not be endorsed to individual speakers.²⁰ The distinction between free speech and free press has important legal consequences.²¹ In fact, media regulation is justified

¹⁹ Raz, above n 10.

²⁰ G Phillipson, 'Leveson, the Public Interest and Press Freedom' (2013) 5 *Journal of Media Law* 220.

²¹ Eric Barendt identifies three different models that deal with the relationship between free speech and free press. The first argues that the two freedoms are equivalent: freedom of the press refers to the free speech rights of owners, editors and journalists. Therefore, no special privileges are justified to the media. The second position, by contrast, maintains that the free press is a distinct freedom from that of free speech, hence special privileges should be recognised. The third perspective, like the first, claims that the two freedoms are equivalent. However, by contrast with the first position, it adds that the free press should be endowed with special privileges when it promotes (and only when it does) the values of freedom of speech. Phillipson adds a fourth model that recognises not only special privileges to the media in order to promote the public interest, but also specific forms of regulation in order to promote the same interest. See E Barendt, *Freedom of Speech*, 2nd edn (Oxford, Oxford University Press, 2007) 417–50; *ibid* 227.

on the basis of this distinction. If certain forms of regulation apply to the institutional speech of the media and not necessarily to individual speech, it is precisely because the former is distinct from the latter. Chapter 5 defends media regulation on the basis of the fundamental distinction between free speech and media freedoms.

There is one further difficulty that must be acknowledged at this stage. As the distinction between free speech and the free press affects the content and scope of these rights with important legal consequences, it is necessary to define 'media freedom' as a legal concept in order to identify who is going to be affected by this distinction. This issue is of special relevance considering the emergence and development of digital technologies. The Internet, in particular the blogosphere and social media, has blurred the traditional distinction between professional journalism (endowed with institutional rights and particular responsibilities) and non-professional free speech. The ability to reach mass audiences is not an exclusive asset of the media industry any longer. In line with these developments, Oster has proposed a functionalist approach to define what constitutes the media. According to him, 'if a person or institution contributes to matters of public interest in accordance with certain standards of conduct, then they are to be conceived of as media'.²² This book will follow Oster's approach, especially in Chapter 5, where media regulation will be justified as a way of enhancing the truth-seeking purpose.

Finally, it is important to clarify what this book is not about. First, it is not about proposing an adequate theory for the protection of speech, nor identifying which forms of speech deserve constitutional protection and which do not according to a general framework. Secondly, it is not about arguing that truth-seeking justifications are the only relevant justifications in liberal theory, or to ignore the relevance of democratic or autonomy defences. On the contrary, the purpose is to assess and to explore why the press remains such a central institution in the mediation of social reality in liberal democracies, despite all the limitations it faces in the exercise of this function. To do this, it is necessary to explore the illusion of the free press in its fullest dimension. It is necessary to overcome (without disregarding) the limitations of external critical standards, and to explore the inherent complexity in the relationship between truth and freedom from within the liberal theory itself. The final aim is not simply to contribute to a critical appraisal of the notion of the free press, but also to provide a theoretical instrument aimed at improving our understanding of what is still a fundamental notion in any democratic polity.

²² J Oster, 'Theory and Doctrine of Media Freedom as a Legal Concept' (2013) 5 *Journal of Media Law* 57.